IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-750

SEARS, ROEBUCK AND CO.,

Petitioner,

vs.

SAN DIEGO DISTRICT COUNTY COUNCIL OF CARPENTERS,

Respondent.

REPLY TO BRIEF IN OPPOSITION

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The Respondent's brief in opposition raises for the first time several arguments against the grant of certiorari. None of these new contentions has merit for the reasons discussed below.

1. The Respondent argues, based on the California Penal Code and decisions of the California Supreme Court, that the decision below "*would* be reached on independent state grounds." Br. in Opp., pp. 4-5. (Emphasis added.) This assertion is neither true nor relevant. The California Court of Appeals twice expressly rejected the very same contention (Pet. App. B, p. A13; Pet. App. D, p. A30) and the California Supreme Court did not even comment on this conclusion. Pet. App. E, p. A23.

The court below, moreover, expressly predicated its opinion solely on a federal ground, *i.e.*, ". . . that federal law preempts both state and federal court jurisdiction of the controversy at hand . . . " *Ibid.*

2. The Respondent also argues that the question presented is "well settled" by decisions of this Court. Br. in Opp., pp. 6-7. However, none of the cases relied upon—*N. L. R. B.* v. *Babcock & Wilcox*, 351 U.S. 105 (1956); *Hudgens* v. *N. L. R. B.*, 424 U.S. 507 (1976); and *Central Hardware Co.* v. *N. L. R. B.*, 407 U.S. 539 (1972)—involved a pre-emption issue. Rather, in each case the dispute centered on the proper rule to be applied by the National Labor Relations Board to union activity on private property and not, as here, on the entirely separate issue of whether state courts retain jurisdiction to enjoin such activity. The latter question, as acknowledged by the court below (Pet. App. E, pp. A40-41, and A46, n. 8), remains unanswered by this Court and a matter of substantial controversy among the States. See Pet., pp. 4-8.

3. Finally, the Respondent argues that even if state jurisdiction is not preempted under the *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959), rule, the only basis for preemption found by the court below (Pet. App. E, p. A44), it would still be preempted by reason of Congressional occupation of the field which contemplates the "free play of economic forces". Br. in Opp., pp. 7-9, citing *Machinists & Aerospace Workers* v. *W. E. R. C.*, ... U.S. ....., 92 LRRM 2881 (1976). As noted in that case (92 LRRM at 2882-2883, ns. 2 and 3), the Labor Act did not divest the States of jurisdiction to regulate some of the weapons that may be utilized by the parties to a labor dispute. See Pet., pp. 10-11. State jurisdiction remains permissible in situations, like the instant trespass controversy, which involve areas of traditional local concern controlled by a state law of general application.

For the foregoing reasons, as well as those set forth in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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